

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE  
AT KNOXVILLE

Assigned on Briefs July 30, 2008

**STATE OF TENNESSEE v. ALLEN JERMAINE HORTON**

**Direct Appeal from the Criminal Court for Hamilton County**  
**Nos. 247075, 261640     Don W. Poole, Judge**

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**No. E2007-02376-CCA-R3-CD - Filed October 16, 2008**

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Allen Jermaine Horton (hereinafter "Horton"), appeals the revocation of his intensive probation sentences. He argues the evidence was insufficient to show that he willfully violated his probation. Following our review of the record, we affirm the judgments of the trial court.

**Tenn. R. App. P. 3; Judgments of the Criminal Court Affirmed**

CAMILLE R. McMULLEN, J., delivered the opinion of the court, in which JOSEPH M. TIPTON, P.J., and JERRY L. SMITH, J., joined.

Ardena J. Garth and Donna Robinson Miller, Chattanooga, Tennessee, for the appellant, Allen Jermaine Horton.

Robert E. Cooper, Jr., Attorney General and Reporter; Deshea Dulany, Assistant Attorney General; William H. Cox, District Attorney General; and Neal Pinkston, Assistant District Attorney General, for the appellee, State of Tennessee.

**OPINION**

**FACTS AND PROCEDURAL HISTORY**

On March 23, 2004, Horton pled guilty to the underlying offenses of theft of property over \$1000, a Class D felony, and robbery, a Class C felony. He was sentenced to two years for the theft of property to be served consecutively to six years for the robbery conviction, for an effective sentence of eight years. He was ordered to serve eleven months and twenty-nine days in confinement with the remainder of the sentence to be served on supervised probation.

Prior to the instant revocation hearing, Horton violated his probation twice. At the first revocation hearing on September 1, 2005, the trial court revoked Horton's probation based on

convictions for disorderly conduct and domestic vandalism,<sup>1</sup> and ordered him to serve eleven months and twenty-nine days in confinement. Horton was then placed on intensive probation for the remainder of his theft of property sentence and supervised probation for his robbery sentence.

Between March and September of 2006, the probation office filed another probation violation report with the trial court against Horton. The report alleged Horton failed to: (1) show verification of employment; (2) show proof of residence; (3) report into the office on more than five dates; (4) follow curfew on more than six dates; and (5) refrain from illicit drug use. An addendum to the report notified the trial court that Horton had absconded and failed to maintain contact with the probation office. An additional addendum also reflected various warrants and new arrests for statutory rape and driving on a revoked license.

At the second revocation hearing on February 5, 2007, the trial court revoked Horton's probation on his robbery case based primarily on a conviction for statutory rape, for which Horton received intensive probation for two years to be served consecutively to his six year robbery sentence,<sup>2</sup> and ordered him to serve eleven months and twenty-nine days in confinement. Upon release, the trial court ordered Horton to be transferred from supervised probation to intensive probation.

A revocation hearing on Horton's third violation, the case sub judice, was held on September 17, 2007. Horton's intensive probation officer, Melanie Moyer, testified that she filed a third violation report after Horton was arrested for possession of marijuana for resale and driving on a revoked license on June 23, 2007. Moyer stated that when Horton reported to her three days later, he failed to advise her of the arrest. When Moyer asked about the arrest, Horton admitted that he had "five baggies of marijuana on him" for personal use, but denied he intended to sell them. Finally, Moyer testified that Horton had excessive curfew violations.

Regarding Horton's employment, Moyer testified that Horton: (1) worked past curfew; (2) failed to bring in verification of his work hours; and (3) failed to call when his work schedule changed. Moyer stated that Horton refused to work at one point during his supervision. She also noted that he failed to report to her on May 8, 2007. Lastly, Moyer testified that Horton was cited for driving on a revoked license and failed to report this citation to her. Given Horton's prior revocations, Moyer concluded that Horton had a "pattern of behavior" of "pick[ing] up new charges."

At the conclusion of the hearing, the trial court emphasized that Horton had been given multiple chances to avoid confinement through supervised as well as intensive probation. Based on the curfew violations, marijuana possession, and the failure to report arrests and citations, the trial

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<sup>1</sup> Horton received a sentence of thirty days for the disorderly conduct and was ordered to pay court costs and to perform two days of public work. He pled guilty to the domestic vandalism charge and received a sentence of eleven months and twenty-nine days which was suspended after he served thirty days.

<sup>2</sup> The sentence for theft of property over \$1000 expired prior to the second violation hearing.

court then revoked Horton's probation in the robbery and statutory rape cases and ordered him to serve the balance of his sentences in confinement.

After a timely notice of appeal, Horton requests this Court to reverse the trial court and to reinstate his probation.

### **ANALYSIS**

In this appeal, Horton argues that the trial court erred because there was insufficient evidence to support a revocation of his probation. Our law states that a trial court may revoke probation and order the imposition of the original sentence upon a finding by a preponderance of the evidence that the defendant has violated a condition of probation. T.C.A. §§ 40-35-310, -311(e) (2006). Probation revocation rests within the sound discretion of the trial court. State v. Kendrick, 178 S.W.3d 734, 738 (Tenn. Crim. App. 2005) (citing State v. Mitchell, 810 S.W.2d 733, 735 (Tenn. Crim. App. 1991)). A trial court's decision to revoke probation will be upheld absent an abuse of discretion. State v. Beard, 189 S.W.3d 730, 735 (Tenn. Crim. App. 2005). In order to establish an abuse of discretion, the defendant must show that there is no substantial evidence in the record to support the trial court's determination that he violated his probation. Id. (citations omitted).

The record shows that this was Horton's third revocation hearing for violating the terms of his probation. In this instance, Horton was required to adhere to a curfew, report an arrest or citation, and refrain from possessing and using intoxicants. The trial court found that Horton: (1) violated his curfew; (2) failed to report new arrests; and (3) admitted to marijuana possession. The record contains substantial evidence that Horton violated the terms of his probation. Therefore, we conclude that the trial court did not abuse its discretion by revoking Horton's probation and ordering confinement for the balance of his sentences. \_\_\_\_\_

### **CONCLUSION**

Based on our review, we conclude that the trial court acted within its discretion in revoking Horton's probation. Accordingly, the judgments of the trial court are affirmed.

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CAMILLE R. MCMULLEN, JUDGE